

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

BOARD OF TRUSTEES OF YELLOWSTONE)
COUNTY, LAUREL SCHOOL DISTRICT)
NO. 7 AND 7-70,)

Appellants,)

vs.)

OSPI 204-92

DEBORAH S. HORNING and JERRY)
SCOTT, COUNTY SUPERINTENDENT OF)
SCHOOLS, CARBON COUNTY, SITTING)
FOR H.C. CHRISTIANSEN, YELLOWSTONE)
COUNTY SUPERINTENDENT OF SCHOOLS,)

DECISION AND ORDER

Respondents.)

* * * * *

STATEMENT OF THE CASE

This is an appeal of the decision of the Acting Yellowstone County Superintendent of Schools dated April 7, 1992, to deny the Laurel Elementary School District's MOTION TO DISMISS employee Horning's appeal of the District's denial of her grievance on the basis of lack of subject matter jurisdiction.

Appellant District alleges error on the part of the County Superintendent in his finding that he has jurisdiction to hear the appeal of Horning under the purview of § 20-3-210, MCA. The District contends that Horning's appeal is not a controversy as defined in § 10.6.102, Administrative Rules of Montana (ARM); and therefore, the County Superintendent lacks jurisdiction to hear the appeal.

1 The threshold question is whether a federal or state law or
2 a contract requires "a determination of (Horning's) legal rights,
3 duties and privileges" in regard to matters grieved to the School
4 District Board of Trustees.

5 DECISION

6 The State Superintendent of Public Instruction has
7 jurisdiction over this matter pursuant to § 20-3-107, MCA.

8 I find that the County Superintendent is without
9 jurisdiction to hear the matter and the case is hereby remanded
10 to the County Superintendent with instructions to grant the
11 District's MOTION TO DISMISS the appeal for lack of subject
12 matter jurisdiction.

13 STANDARD OF REVIEW

14 The standards for review by the State Superintendent are set
15 forth in § 10-6-125, ARM. This rule was modeled upon § 2-4-704,
16 MCA, and the Montana Supreme Court has interpreted the statute
17 and the rule to mean that agency (County Superintendent) findings
18 of fact are subject to a clearly erroneous standard of review and
19 that conclusions of law are subject to an abuse of discretion
20 standard of review. Harris v Bauer, 230 Mont. 207, 749 P.2d
21 1068, at 1071, 45 St. Rptr. 147, at 151, (1988); City of Billings
22 v. Billings Firefighters, 200 Mont. 421, at 430, 651 P.2d 627, at
23 532 (1982). Further, the petitioner for review bears the burden
24 of showing prejudice by a clearly erroneous ruling. Terry v.
25 Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153

1 (1986), citing Carruthers v. Board of Horse Racing, 216 Mont.
2 184, 700 P.2d 179, at 181, 42 St. Rptr. 729 (1985). Findings are
3 binding on the court and not "clearly erroneous" if supported by
4 "substantial credible evidence in the record." Id. This has
5 been further clarified to mean that a finding is clearly
6 erroneous if a "review of the record leaves the court with the
7 definite and firm conviction that a mistake has been committed."
8 Wage Appeal v. Board of Personnel Appeals, 208 Mont. 33, 676 P.2d
9 194, at 198 (1984). A conclusion of law is controlling if it is
10 neither arbitrary nor capricious. City of Billings, 651 P.2d at
11 632.

12 DISCUSSION

13 The issue on appeal to this Superintendent is whether the
14 County Superintendent has jurisdiction to hear an appeal of the
15 Board of Trustees' decision to deny a grievance filed by Horning
16 in accordance with policies adopted by the Trustees.

17 Section 20-3-210, MCA, states in pertinent part:

18 (1) Except as provided under 20-3-211, the county
19 superintendent shall hear and decide all matters of
20 controversy arising in his county as a result of
21 decisions of the trustees of a district in the county.

22 "Controversy" is defined by the administrative rules adopted
23 by the State Superintendent of Public Instruction. ARM 10.6.102
24 states: **"SCHOOL CONTROVERSY MEANS CONTESTED CASE.** Contested
25 case means any proceeding in which a determination of legal
rights, duties or privileges of a party is required by law."

1 Therefore, a county superintendent has authority to review only
2 those matters where "a determination of legal rights, duties or
3 privileges of a party is required by law."

4 There was no collective bargaining agreement governing the
5 employment relationship between the Laurel Elementary School
6 District and Ms. Horning.

7 The appeal to the County Superintendent was as follows:

8 Petitioner appeals the decision of the Respondent Board
9 of Trustees at its October 14, 1991 meeting denying her
grievance initiated on August 30, 1991.

10 The grievance stated as follows:

11 The district has violated district policy
and grievant's employment rights as follows:

12 1. The district has eliminated a position
13 in the administration office and assigned
the bulk of these duties to grievant in
14 addition to her regular duties, creating an
unreasonable workload.

15 2. The superintendent maintains files on
16 grievant separate from the official
personnel file.

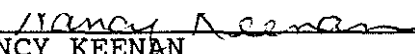
17 3. The district has not properly evaluated
18 grievant.

19 4. The superintendent has disciplined
grievant without just cause.

20 Horning contends that § 20-3-210, MCA, creates her right to
21 a hearing before the county superintendent. This is an
22 inaccurate interpretation of the statute. MCA 20-3-210 requires
23 that there be a "controversy" as defined in ARM 10.6.102. The
24 matters Horning grieved to the Board of Trustees are not within
25

1 the ARM 10.6.102 definition of controversy. Absent such a
2 controversy, the County Superintendent lacks jurisdiction in this
3 case.

4 DATED this 10 day of September, 1992.

5
6
7 
NANCY KEENAN

8 **CERTIFICATE OF SERVICE**

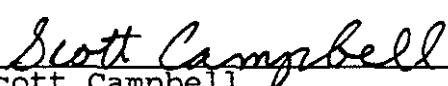
9 THIS IS TO CERTIFY that on this 11th day of September, 1992,
10 a true and exact copy of the foregoing Decision and Order was
mailed, postage prepaid, to the following:

11 Donna K. Davis
12 MATOVICH, ADDY & KELLER, P.C
225 Petroleum Building
13 2812 First Avenue North
Billings, Montana 59101

Catherine M. Swift
ERDMANN LAW OFFICE
P.O. Box 5418
Helena, Montana 59604

14 Jerry Scott
15 Carbon County Superintendent
P.O. Box 116
16 Red Lodge, Montana 59068

Buzz Christiansen
Yellowstone Co. Supt.
208 N. Broadway, Rm. 364
Billings, MT 59101

17
18 
Scott Campbell
19 Paralegal Assistant
Office of Public Instruction
20
21
22
23
24
25